**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**

**AT JODHPUR**

**JUDGMENT**

Amba Lal Vs. Kulprakash Gautam & ors.

**S.B.CIVIL MISC. APPEAL NO.173/1993**

Against the award dated 03.05.1993 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.13/1985.

Date of Judgment ::: 23rd May 2007.

**PRESENT**

**HON'BLE MR.JUSTICE DINESH MAHESHWARI**

Mr.Manoj Bohra for Mr.Rajesh Joshi for the appellants.

Mr.P.K.Bhansali )
Mr.B.K.Bhatnagar) for the respondents.

**BY THE COURT:**

This appeal has been preferred against the award dated 03.05.1993 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.13/1985 by the transferee owner-cum-driver of the scooter involved in accident on whom alone has been fastened the entire liability for payment of compensation to the injured claimant in the sum of Rs.17,600/- together with

interest at the rate of 12% per annum from the date of filing of claim application.

On 02.10.1984 at about 07:30 a.m. near village Siyawa on Ambaji-Abu Road route, the claimant-respondent No.1 Kulprakash (26 years), while pillion-riding a scooter bearing registration No. RRY 6597 that was driven by the appellant Ambalal, sustained injuries including fracture of right tibia and fibula bones on being hit by an oncoming bus bearing registration No. GRR 9524 belonging to the Gujarat State Road Transport Corporation. Narrating the incident and alleging exclusive fault of the bus driver, the claimant made the claim for compensation on 01.04.1985 for the loss suffered by him due to the injuries against the driver and owner of the said bus with its unnamed insurer (non-applicants Nos. 1 to 3); and also impleaded the present appellant Ambalal and the insurer of the scooter as non-applicants Nos. 4 & 5.

Proceedings of the claim case and respective stand of the parties have a direct bearing on the questions involved in this appeal and shall be examined in detail hereafter. However, for an outline, suffice is to notice that the non-applicants Nos.1 & 2, owner and driver of the bus, submitted in their reply filed on 26.07.1985 that the accident occurred for rash and negligent driving of the scooter and not because of any fault on the part of the bus driver. The appellant Ambalal (non-applicant No. 4) did

not file any reply to the claim application. The insurer of the scooter (non-applicant No. 5) stated a general denial of claim averments in its reply filed on 12.09.1985. However, on 05.09.1986 the Tribunal deleted the non-applicant No.5, insurer of the scooter, from the array of parties at the request of the claimant, but after imposing upon him costs of Rs. 150/-.

On the pleadings of parties, the Tribunal framed issues on 07.11.1986. Thereafter, on 06.03.1987, the claimant Kulprakash was examined as AW-1; and the present appellant Ambalal was being examined as claimant's witness AW-2 but during the course of his statement, the claimant proposed to amend the claim application and, therefore, further recording of his statement was deferred.

Thereafter, the claim application was amended and the registered owner of the scooter, named Gulam Bhai, was impleaded as non-applicant No.5 and the insurer of scooter was again impleaded, now as non-applicant No.6. The prayer in the claim application was also expanded for awarding compensation against the driver, owner, and insurer of the vehicle whose driver be found at fault. After filing of the amended claim application, the Tribunal issued notice to all, the existing, newly added, and re-impleaded, non-applicants. The non-applicants Nos. 1 & 2 (driver and owner of the bus) chose not to file any further reply and relied upon the reply already

filed. The non-applicant No. 5 submitted in his reply that his name was Dr. Ghulam Sibtain; that he had sold the scooter in question to the non-applicant No. 4 Ambalal at the very time of taking delivery at the show-room and handed him over the sale-letter also; that the scooter was in possession of Ambalal only; and that the answering non-applicant was not the owner of the vehicle and was not liable for compensation. The insurer of the scooter, now in its reply filed on 01.12.1987 took the stand that the scooter was insured in the name of Dr. Ghulam Sibtain covering third party risk for the period 05.09.1984 to 04.09.1985; but according to the claim averments, on the date of accident Ambalal was the real owner of the vehicle; and for want of privity of contract between the insurer and Ambalal, there was no liability in the answering non-applicant insurer. However, yet again, the appellant Ambalal chose not to file any reply.

The Tribunal proceeded to frame the issues afresh on 05.07.1989. Thereafter, in evidence the claimant Kulprakash examined himself as AW-1, other pillion rider of scooter Rajesh Kumar as AW-2, and an alleged eyewitness Somalal as AW-3. On behalf of non-applicants were examined the bus driver Keshavlal as NAW-1/1, the bus conductor Joita Bhai as NAW-1/2, the registered owner of scooter Dr.Ghulam Sibtain as NAW-3 and the Investigating Officer, ASI Laxman Singh as

NAW-4. The appellant Ambalal did not appear in evidence though the claimant proposed to examine him; and though the insurer too wanted to examine him and even sought getting him summoned whereupon an assurance was given on his behalf by the counsel that he shall appear with the sale-letter and all other documents available with him.

After hearing the parties and examining the evidence on record, the Tribunal concluded that the accident occurred exclusively for the fault of scooterist, the appellant. The Tribunal found the claimant entitled for compensation in the sum of Rs.17,600/- for the loss suffered by him due to the injuries sustained in accident. The Tribunal also found that registered owner Ghulam Sibtain sold the scooter in question to the appellant Ambalal on 15.02.1983 and the claimant was entitled to recover compensation only from Ambalal. It was also observed that Ambalal, though a party to the claim application, has not filed any reply and it was due to his mistake that the claimant suffered injuries and resultant loss. The Tribunal, therefore, proceeded to make the award only against the appellant Ambalal in the sum of Rs.17,600/- together with interest at the rate of 12% per annum from the date of filing of claim application; and rejected the claim application in relation to the other non-applicants.

Assailing the award aforesaid, it has been strenuously contended on behalf of the appellant that the award against him has been made in disregard of the principles of natural justice as no relief was claimed against him and no issue was framed on his liability towards the accident; that the claimant himself has exonerated the appellant and stated that only the bus driver was at fault and, therefore, no award could have been made against the appellant. It has also been contended that the Tribunal has erred in exonerating the insurer of the scooter inasmuch as the ownership continued with the registered owner of the scooter and there is no evidence on record that the alleged transaction of transfer of scooter has become final; that the capacity of the appellant was only that of a driver of the scooter and even if any fault was found in him, the insurer could not have been exonerated.

At the first look, the grievance raised on behalf of the appellant seems carrying some substance; and it appears questionable as to how an award could have been made against the appellant, the scooterist, against whom no allegation of responsibility towards the accident was made in the claim application; and rather the claim was directed only against the non-applicants Nos. 1 & 2, the driver and owner of the bus in question? In fact, this court while considering the matter on stay application on 27.08.1998 has stayed execution

of the impugned award on this very consideration that the claimant never made any allegation against the appellant and such allegation came up only in the reply averments taken on behalf of the driver and owner of the bus, of which no notice was given to the appellant. However, a closer scrutiny of the matter brings hollowness of the submissions of the appellant to the fore.

The accident in question occurred on 02.10.1984 and initially the claim application was submitted by the claimant on 01.04.1985 against Keshavlal, driver of the bus as non-applicant No.1, the Gujrat State Road Transport Corporation, owner of the bus as non-applicant No. 2, the unnamed insurer of the bus as non-applicant No. 3, Ambalal (the appellant), in his capacity as driver and owner of the scooter as non-applicant No. 4, and United India Insurance Co. Ltd., the insurer of the scooter as non-applicant No. 5. The present appellant, non-applicant No. 4, was served and put his appearance through counsel on 11.05.1985. However, on 26.07.1985 counsel for the appellant specifically stated that he did not wish to submit reply to the claim application.

A perusal of the record makes it clear that the claimant moved an application for deleting the name of the non-applicant No. 5 (scooter insurer) and such application was allowed on 05.09.1986 on costs of Rs. 150/-; and a note of

deletion of the non-applicant No. 5 was made in red ink on the cause title. The issues were framed on 07.11.1986. Thereafter, the case file of related criminal case was requisitioned.

On 06.03.1987, in oral evidence on behalf of the claimant, the statement of Kulprakash (the claimant) was recorded as AW-1 and this very day the present appellant Ambalal appeared as a witness of the claimant and his statement as AW-2 commenced. However, during the course of the statement of Ambalal, counsel for the claimant desired to amend the claim application and hence further recording of his statement was deferred and the file of criminal case was returned. The order-sheet dated 06.03.1987 reads as under:-

> "6.3.87
>
> वकील प्रार्थी श्री V.K. गौतम उपस्थित ।
> वकील अप्रार्थीगण सं. 1, 2 श्री R.C. Shahji उप.
> वकील अप्रार्थी सं.4 श्री S.P. दशोरा अनुपस्थित ।
> A.W. 1 कुलप्रकाश का बयान लिया गया । A.W.2 अम्बालाल के बयान के दौरान वकील प्रार्थी ने जाहिर किया कि वह इस प्रकरण में संशोधन का प्रार्थना-पत्र प्रस्तुत करना चाहते है । गैर सायल ने वकील की प्रार्थना पर कि अभी साक्षी न ली जाये कोई एतराज न होना जाहिर किया । जिस पर बयान पर नोट लगाया जाकर बयान अधूरा रखा गया । प्रदर्श P 12 फौजदारी मुकदमें की फाईल में होने से वकील प्रार्थी को हिदायत की गई कि वह प्रमाणित प्रतिलिपि अगली तारीख से पूर्व न्यायालय में पेश करेंगे । श्री शाहजी ने फर्द के साथ पुलिस बयान कुलप्रकाश की प्रमाणित फोटो कॉपी पेश की पत्रावली वास्ते पेश होने प्रार्थना-पत्र व प्रमाणित प्रति तारीख 19.3.87 को पेश हो । मूल दाण्डिक पत्रावली पुन: लौटाई जावे ।"

Thereafter, the claimant did move an application for amendment that was allowed and the amended claim application was filed on 31.03.1987. In the amended claim application, while retaining the description of the non-applicant Nos. 1 to 4, the claimant impleaded Gulam Bhai in his capacity as the registered owner of the scooter as non-applicant No. 5 and again impleaded the insurer of the scooter, now as non-applicant No. 6.

After the aforementioned amendment of the claim application, the Tribunal took up the proceedings de novo, and notices were again sent to all the non-applicants. The order-sheet dated 23.05.1987 shows that: (i) counsel appeared for the non-applicants Nos. 1 & 2 (driver and owner of the bus) and opted not to file any further reply to the amended claim application and relied upon the reply already filed; (ii) counsel appeared for the non-applicant No. 6 (scooter insurer) and sought time to file reply that was granted; (iii) notice sent to the non-applicant No. 5 (registered owner of the scooter) was not received back after service and fresh notice was ordered to be issued by registered post; and (iv) it was observed that notice to the non-applicant No. 4 (the present appellant Ambalal) was not sent and the same was ordered to be sent upon filing of the requisite process fee etc. As already noticed, no specific person or entity was impleaded as non-applicant No. 3.

On 17.09.1987, the counsel put appearance on behalf of the present appellant and specifically gave out that no reply was proposed to be filed. Thereafter, reply on behalf of the non-applicant No. 6 was filed on 01.12.1987; and that on behalf of the non-applicant No. 5 was filed on 30.11.1988.

After the proceedings aforesaid, the Tribunal framed the issues over again on 05.07.1989 and the matter was placed for claimants' evidence. On 23.09.1989, the claimant Kulpraksh now examined himself as AW-1 and the third occupant of the scooter Rajesh Kumar as AW-2; and on 02.12.1989 examined AW-3 Somalal, an alleged eyewitness to the incident. On 26.04.1990, it was stated on behalf of the claimant that now he desired to examine Ambalal (the present appellant) only; and time was granted for the purpose. However, without examining Ambalal or any other witness, the claimant closed his evidence on 04.08.1990.

Proceedings in the claim case thereafter show that on 27.10.1990, NAW-1/1 Keshavlal and NAW-1/2 Joita Bhai were examined and the witness Laxman Singh was summoned. On 02.02.1991, NAW-3 Ghulam Sibtain was examined and an application was moved for summoning of two witnesses namely, the non-applicant No.4 Ambalal (the appellant) and the clerk of District Transport Office. The counsel appearing on behalf of the present appellant stated that he would be

produced along with all relevant papers including sale letter; and it appears that for such assurance, process was not issued for his appearance. The proceedings were thereafter adjourned from time to time for summoning of the I.O. Laxman Singh and so also because the learned Presiding Officer was not available. On 02.09.1992, an objection was raised on behalf of the claimant against granting of further adjournment and the Tribunal granted last opportunity to the non-applicants either to get the witnesses summoned or to produce them. Thereafter, NAW-4 Laxman Singh was examined on 04.07.1992 and yet another adjournment was granted in the interest of justice. The matter was again adjourned on 01.08.1992 with the stipulation that upon failure of the non-applicants to produce evidence on the next date, arguments shall be heard but it was also noted that the Presiding Officer has been transferred. It was given out on behalf of the non-applicants on the next date of 19.09.1992 that they did not wish to lead any other evidence and the matter was posted for final arguments.

On 16.04.1993, final arguments were heard and the matter was posted for decision on 23.04.1993 but then it was noted by the learned Presiding Officer that counsel for Ambalal (the present appellant) was not present and extending an opportunity to him, the matter was placed for further arguments on 24.04.1993. On this date, again because counsel for the

appellant Ambalal was not present, the matter was adjourned and, ultimately the hearing was concluded on 01.05.1993 and then the impugned award was pronounced on 03.05.1993.

A comprehension of the proceedings before the Tribunal makes it more than clear that the appellant Ambalal has consciously chosen to move on the periphery of these claim proceedings and avoided effective participation in spite of not only having all opportunities but even being required by the other parties too and even after extending assurance through counsel for entering the witness-box with all relevant documents. The grievance sought to be raised in this appeal about denial of adequate opportunity of hearing or of any prejudice are more of pretence than of substance.

It is true that in the original claim application, the claimant asserted fault and mistake only on the part of bus driver but the present appellant was nevertheless impleaded as party non-applicant No.4 and he consciously exercised his option not to file reply to the claim application, as stated on his behalf on 26.07.1985. May be at the given point of time the appellant was justified in not filing any reply as there was no allegation against him of causing loss to the claimant; and the prayer for awarding compensation as made in the original claim application, on a reasonable construction of pleadings, could only be referred to the non-applicants No.1 & 2. However, the appellant Ambalal

was not oblivious to the proceedings; and on 06.03.1987 consciously appeared as claimant's witness, AW-2. His deposition was deferred as the claimant proposed to amend the claim application. By way of amendment, not only the registered owner and insurer of the scooter were impleaded as non-applicants Nos. 5 & 6 but further, the claimant materially altered the prayer made in the claim application and sought compensation against the driver, owner and insurer of the vehicle whose driver be found at fault by the Tribunal. The prayer made in the original claim application filed on 01.04.1985 and that made in the amended claim application filed on 31.03.1987 could be placed in juxtaposition to notice the material difference thus:

| Prayer as made in paragraph 19 of the original claim application filed on 01.04.1985 | Prayer as made in paragraph 19 of the amended claim application filed on 31.03.1987 |
|---|---|
| अत: प्रार्थी का नम्र निवेदन है कि प्रार्थी का क्लेम रूपये 2,29,563/- दो लाख उनतीस हजार पांच सौ तरेसठ रूपये का मय ब्याज विरूद्ध अप्रार्थीगण सामूहिक व अलग-अलग जिम्मेवारी से स्वीकार फरमाया जाकर प्रार्थी को दिलाना फरमावे व इस आवेदन का खर्चा जिम्मे अप्रार्थीगण रखना फरमावे । | अत: प्रार्थी का नम्र निवेदन है कि प्रार्थी का क्लेम रूपये 2,29,563/- दो लाख उनतीस हजार पांच सो तरेसठ का मय ब्याज विरूद्ध विपक्षीगण के विरूद्ध संयुक्त अथवा पृथक पृथक जवाबदारी से न्यायालय जिस वाहन चालक की गफलत अथवा लापरवाही होना माने उससे, उसके मालिक व उसकी बीमा कम्पनी से प्रार्थी को दिलवाना फरमावे और अन्य कोई दाद जो हितकर प्रार्थी हो प्रदान करना फरमावे । प्रार्थी को तारीख क्लेम से बयाज 12 बारह प्रतिशत से दिलाना फरमावे । प्रार्थी का यह भी निवेदन है कि प्रार्थी को नो फोल्ट लाईबलटी के अनुसार धारा 92 ए मोटर व्हीकल एक्ट के अनुसार अप्रार्थीगण से प्रार्थी को रू. 7500/- सात हजार पांच सौ तुरन्त दिलाना फरमावे । |

The Tribunal took care to issue notice on the amended claim application not only to the newly added non-applicants but to the existing non-applicants, including the appellant, as well. The appellant yet opted not to file his reply to the claim application, as stated on 17.09.1987, despite being aware of the fact that there has been a shift in the stand of the claimant; and that the registered owner of the scooter, Dr. Ghulam Sibtain was impleaded as party to the claim application.

The appellant Ambalal was sought to be produced again in evidence by the claimant as stated in the order-sheet dated 26.04.1990 but the appellant did not appear. The appellant Ambalal was sought to be summoned by the insurer of the scooter (vide order-sheet dated 02.02.1991) but it was given out by his counsel that he would appear with relevant documents. He did not. Even after closure of evidence and even after closure of final arguments by all other parties and posting of the matter for pronouncement of award, the Tribunal extended yet another opportunity of hearing to the counsel for the appellant, adjourned the matter for absence of his counsel, and concluded the matter only after hearing all the parties.

It is apparent that taking shelter in the proposition of the claimant, who initially wanted to recover compensation only from the non-applicants No.1 & 2, the appellant simply avoided the proceedings probably shying away from the uncomfortable

consequences of his being the transferee owner of the scooter. Whether copy of reply filed by the non-applicants Nos.1 and 2 was supplied to the appellant or not, the amended claim application dated 31.03.1987 definitely required the appellant to take a stand and make his position clear by filing reply. His not filing reply to the amended claim application and then, his regular avoidance to appear in evidence calls for drawing of adverse inference on all the material aspects against him; and in the facts of the case, such adverse inferences reasonably lead to findings against him on the question of transfer of ownership of the scooter and so also on the responsibility towards accident.

After through consideration of the material placed on record the Tribunal has found the accident to have occurred because of the exclusive fault of the appellant Ambalal for his negligent driving of the scooter and getting severed away from his left hand side of the road on a curve and taking a collision course towards the oncoming bus. According to the claimant, the corner of the bus brushed against his right leg. The claimant was a pillion rider on the scooter driven by the appellant; and admittedly, three persons were riding the scooter. In the totality of facts and circumstances, the Tribunal cannot be said to have erred in holding the appellant

responsible for the accident causing injuries to the claimant and, thus, liable for compensation.

So far the registered owner of the scooter is concerned, he has specifically established in evidence of his having sold the scooter to the appellant Ambalal in the year 1983 and has produced a receipt dated 15.02.1983 in that relation. The Tribunal has considered all the facts of the case and has decided issues No.3 and 4 thus:

> "विवाद्यक संख्या 3 व 4 : यह सही है कि दुर्घटना के समय वाहन का रजिस्टर्ड मालिक गुलाम सिबतेन था । दुर्घटना दिनांक 2.10.84 को हुई और इससे पहले ही गुलाम सिबतेन ने यह स्कूटर अम्बालाल को बेच दिया । स्वयं प्रार्थी का कहना है कि दुर्घटना के समय अम्बालाल ने स्कूटर खरीद लिया था। अम्बालाल ने बताया कि स्कूटर उसने खरीद लिया है । दुर्घटना के समय स्कूटर अम्बालाल के कब्जे में था । अम्बालाल ने ही न्यायालय से जब्त सुदा स्कूटर को प्राप्त किया है । एन.ए.डब्लू-3 गुलाम सिबतेन जो स्कूटर का रजिस्टर्ड मालिक था उसका कहना है कि 1983 में उसने अम्बालाल को स्कूटर बेच दिया था और इसकी रसीद अम्बालाल ने न्यायालय में पेश की है जो डी-1 है जिस पर अम्बालाल के हस्ताक्षर है । यह रसीद 15.2.83 की है इस दिन उसने अम्बालाल को स्कूटर बेचा उसने सेल लेटर पर अपने हस्ताक्षर करके अम्बालाल को दे दिया । उसका कहना है कि उसने स्कूटर छोड़ने के लिए कोई प्रार्थना नहीं दी । ने ही उसने सुपुर्दगी पर स्कूटर लिया । स्कूटर का चालक अम्बालाल था उसने इसको छुड़ाया होगा । प्रदर्श डी.-1 डिलीवरी रसीद है जो 15.2.83 को तकमील की गई थी । इसके अनुसार गुलाम सिबतेन से अम्बालाल ने स्कूटर आर.आर.वाई. 6597, चेसीज नं. 238660 1983 प्राप्त किया था ।"

On the facts and in the circumstances of this case, the Tribunal cannot be said to have erred in exonerating the registered owner of the scooter who has established having transferred the vehicle to the appellant Ambalal, having delivered possession of the same and having executed sale letter in his favour. When the registered owner of the vehicle in whose name stood the insurance coverage is not held liable, there appears no scope for considering the question of liability of the insurer. Moreover, the claimant has not filed any appeal against the award in question and has not raised any grievance against exoneration of the registered owner and the insurer. So far the appellant is concerned, the grievance does not appear justified.

The obvious result of discussion aforesaid is that this appeal is totally bereft of substance.

Consequently, the appeal fails and is dismissed with costs.

**(DINESH MAHESHWARI), J.**

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